

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MUZI HAR AL-HASANNAWY,

Defendant-Appellant.

UNPUBLISHED

March 30, 2006

No. 258265

Calhoun Circuit Court

LC No. 04-001378-FH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant was found guilty by a jury of resisting and obstructing a police officer, MCL 750.81d(1), and resisting and obstructing a police officer causing injury requiring medical attention, MCL 750.81d(2), for which he was sentenced to concurrent terms of twelve months in jail. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While incarcerated in the Calhoun County Jail, defendant ignored an order to “lock down,” i.e., return to his cell. When a pair of corrections officers repeated the order, defendant struck one of them with a chair and resisted their attempts to control him. On appeal, defendant asserts that he was denied the effective assistance of counsel because his trial attorney failed to adequately object to inflammatory statements made before the jury.

A determination as to whether a defendant has been deprived of the effective assistance of counsel presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). The court must “find the facts, and then must decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel.” *Id.* The trial court’s factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.*

Effective assistance of counsel is presumed and the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *People v Rodgers*, 248 Mich App 702, 715; 645 NW2d 294 (2001). To establish ineffective assistance of counsel, the attorney's performance must have been “objectively unreasonable in light of prevailing professional norms” and “but for the attorney's error or errors, a different outcome reasonably

would have resulted.” *People v Harmon*, 248 Mich App 522, 531; 640 NW2d 314 (2001), citing *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

At trial in the instant case, defendant denied striking the officers and testified that he failed to obey their order to “lock down” because he did not understand what they wanted him to do. To rebut this testimony, the prosecution called Officer Scott Hamilton who testified that he read the rules to defendant when he was admitted to the jail. The officer further testified that defendant had been admitted to the jail on a prior occasion and that this must have been in 2003 because defendant had been involved in a fight in the housing unit in May of that year. Defense counsel objected to the statement regarding the fight and the trial court sustained the objection. Nevertheless, defendant asserts that his counsel was ineffective because she did not also move to strike this statement.

We hold that the decision of defendant’s trial counsel to not move to strike such evidence constituted trial strategy. That is, counsel could have determined that such a motion could have drawn further attention to the potentially prejudicial statement and, thus, done more harm than good. See *People v Barker*, 161 Mich App 296, 304; 409 NW2d 813 (1987). This Court will neither substitute its judgment for that of counsel regarding matters of trial strategy nor assess counsel’s competence with the benefit of hindsight. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). Consequently, defendant cannot establish that defense counsel’s performance was objectively unreasonable.

Further, even if his attorney’s failure to move to strike the officer’s statement had been a serious error, defendant cannot establish prejudice. In addition to upholding defense counsel’s objection to the officer’s statement, the trial court instructed the jury to disregard “evidence to which an objection was sustained” when making its decision. “It is well established that jurors are presumed to follow their instructions.” *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Because defendant cannot establish that his defense counsel’s actions were objectively unreasonable or that they affected the outcome of his trial, we hold that he was not denied the effective assistance of counsel.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra